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No. 385 / 0

In the Supreme Court of the United States

OCTOBER TERM, 1929

THE UNITED STATES OF AMERICA AND INTERSTATE COMMERCE COMMISSION, APPELLANTS

v.

CHICAGO, MILWAUKEE, ST. PAUL AND PACIFIC RAILROAD COMPANY

ON APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS

STATEMENT OF JURISDICTION

In the Supreme Court of the United States

OCTOBER TERM, 1929

No. 395

THE UNITED STATES OF AMERICA AND INTERSTATE Commerce Commission, appellants

v.

CHICAGO, MILWAUKEE, ST. PAUL AND PACIFIC RAILroad Company

ON APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS

STATEMENT OF JURISDICTION

In compliance with Rule 12 of this Court, appellant submits herewith its statement showing the basis of this Court's jurisdiction in the above-entitled cause:

A

STATUTES

Section 238 of the Judicial Code as amended by Act of February 13, 1925 (c. 229, 43 Stat. 936, 938), paragraph (4) (U. S. C. Title 28, Sec. 345).

Urgent Deficiencies Act of October 22, 1913 (c. 32, 38 Stat. 208, 219, 220; U. S. C. Title 28, Sec. 47).

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B

DATE OF DECREE AND APPLICATION FOR APPEAL

The final decree was entered July 15, 1929. (R. 204.)

The application for appeal was filed, and the order allowing the appeal was entered, August 21, 1929. (R. 206–208.) Notices of appeal with service acknowledged were filed August 21, 1929, and September 4, 1929. (R. 209, 210.) The case was docketed in this Court on September 12, 1929.

C

NATURE OF THE CASE

The suit was brought by the new railroad company, the appellee, to enjoin and annul, in part, a certificate and order of the Interstate Commerce Commission entered January 4, 1928, and supplemental order entered March 13, 1928, in proceedings entitled "Chicago, Milwaukee & St. Paul Reorganization," Finance Docket No. 6240, 131 I. C. C. 673; 138 I. C. C. 291. (R. 1–16.) The certificate and order authorized appellee, among other things, to issue in connection with a reorganization plan certain securities which were to be exchanged for stock of the old company upon the stockholders' depositing their stock and paying certain amounts of cash per share. (R. 163–165.)

The order contained the following language (R. 164):

> * * * Provided, however, and the authority herein is granted upon the express

> conditions, that the applicant (a) shall not pay any underwriting fees in connection with the proposed issue of securities; and (b) shall impound in a separate fund the money received from the payment by holders of preferred and common stock in an amount equal to $4 a share, which shall not be paid out unless and until so authorized by order of the court in respect to payments subject to the court's jurisdiction or by this commission.

The report of the Commission contained the following language (R. 140):

> Of the $4 a share assessment to be paid by the stockholders, $1.50 a share on the existing preferred and common stock is to be set aside for the compensation of the reorganization managers, various protective committees, and the fees of their counsel, depositaries, and expenses in connection therewith.
> * * *

The specially constituted District Court overruled motions of the United States and the Commission to dismiss the petition for lack of jurisdiction to enjoin and annul, separately from the Commission's grant of authority to issue the securities, the express requirement or terms and conditions to the authority granted by the order. (R. 196–204.)

On the merits the court held that if the language of the Commission's order, quoted above, required appellee to obtain and impound the $1.50 per share above referred to, the order was invalid on the ground that such fund, being uncapitalized in any

new security and being set aside for the express purpose of satisfying expenses of the reorganization, was beyond the Commission's jurisdiction. The final decree (R. 205) permanently enjoins the Commission—

> * * * from enforcing or attempting to enforce the certificate and order of the Interstate Commerce Commission entered January 4, 1928, or the supplemental order of said commission entered March 15, 1928, in respect of the issuance of certain securities by the petitioner herein, by the institution of either civil or criminal proceedings against the petitioner, its directors, officers, agents, or attorneys (1) by reason of the failure of the petitioner to obtain a sum equal to one dollar and fifty cents ($1.50) per share of the preferred and common stock of the Chicago, Milwaukee & St. Paul Railway Company paid by the stockholders thereof (in the petition and hereinafter called the trust fund) to the reorganization managers pursuant to the reorganization plan approved by this court; (2) by reason of the failure of the petitioner to impound said fund; and (3) by reason of any payment heretofore or hereafter made out of said trust fund without a prior determination by the Interstate Commerce Commission of the amount so to be paid, of the compensation, fees, disbursements, and other expenses provided to be paid out of the trust fund by the reorganization plan.

D

CASES SUSTAINING JURISDICTION

Venner v. *Michigan Central Railroad Co.*, 271 U. S. 127.

Colorado v. *United States*, 271 U. S. 153.

Home Furniture Co. v. *United States*, 271 U. S. 456.

Cleveland, etc., Ry. v. *United States*, 275 U. S. 404.

B. & O. R. R. v. *United States*, 277 U. S. 291.

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OCTOBER, 1929.

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